

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability )  
company, )

Plaintiff, )

vs. )

KEVIN SYKES-BONNETT and SYKED )  
ECU TUNING INCORPORATED, a )  
Washington corporation, )

Defendants. )

No. 3:17-cv-05760 BHS

**DEFENDANTS' SURREPLY IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO QUASH DEFENDANTS'  
SUBPOENA ISSUED TO THIRD  
PARTY GOOGLE**

COME NOW Defendants Kevin Sykes-Bonnett and Syked ECU Tuning, Inc. (collectively "Syked Tuning") and respectfully move this Court, pursuant to LR 7(g), to strike that portion of Plaintiff HP Tuners, LLC's ("HP Tuners") Reply Brief (Dkt 42) pertaining to HP Tuners' purported demonstration of standing. More specifically, Syked Tuning moves to strike from page 3, line 17 to page 4, line 10 of the Reply Brief.

As noted in its opposition, Syked Tuning has challenged HP Tuners' standing to file a motion to quash the Google Subpoena. See Dkt 40 at page 5. In its Reply, HP Tuners admits that it is required to demonstrate standing to bring a motion to quash a third-party subpoena. See C. Wright & A. Miller, 9A Fed. Prac. And Proc. Civ. § 2459 (3d ed.); *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979). However, rather than demonstrate that anyone at HP Tuners does in fact have such a personal right, HP Tuners continues to pretend that the number is (or was) never associated with anyone at HP Tuners yet, somehow, it still has standing. See Dkt 42 at

1 page 5, line 8 (“a fishing expedition pursuant to which *the owner of the identified Google Number*  
2 will be forced. . . “)(emphasis added).

3 Even more troubling is that HP Tuners completely ignored Syked Tuning’s concern about  
4 spoliation. See Dkt 40 at page 8, lines 21-27 (“[T]he next step will be to further investigate the  
5 circumstances surrounding why Keith Prociuk terminated the Google Number to determine  
6 whether spoliation has occurred.”). In short, HP Tuners (1) denies that the Google Number was  
7 in fact associated with Keith Prociuk, (2) alleges that Keith Prociuk has standing to challenge the  
8 Google Subpoena merely because Syked Tuning suspects it was associated with him, and (3)  
9 tacitly admits that Keith Prociuk did in fact terminate the Google Number after being put on  
10 notice to preserve those communications. *See, e.g., Bus. Guides, Inc. v. Chromatic Commc'ns*  
11 *Enterprises, Inc.*, 121 F.R.D. 402, 404 (N.D. Cal. 1988)(silence regarding allegations operates as  
12 tacit admission that allegations are true), order aff’d in part, vacated in part, 892 F.2d 802 (9th  
13 Cir. 1989), aff’d, 498 U.S. 533, 111 S. Ct. 922, 112 L. Ed. 2d 1140 (1991).

14 It appears HP Tuners is desperately attempting to avoid an adverse inference based on  
15 spoliation by trying to prevent Syked Tuning from learning the whole truth. Syked Tuning urges  
16 the Court to strike HP Tuners’ argument regarding standing and sustain the Google Subpoena.

17 DATED: May 30, 2018

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Bonnett and Syked ECU Tuning, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated below I did personally serve the above document on the persons and in the manner indicated below. If the manner of service indicated below is by CM/ECF, the Clerk of the Court will send email notification to such persons.

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Executed on May 30, 2018 at Seattle, Washington.

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